

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4883 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A J PATHAN

Versus

CHAIRMAN

Appearance:

MRS KETTY A MEHTA for Petitioner
None present for Respondent No. 1
MS MANISHA LAVKUMAR, AGP, for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. The petitioner, who possibly would have retired
by now from the Government services and an employee of
the respondent No.1 filed this petition under Article 226
of the Constitution and prayed for quashing and setting

aside of the judgment and order dated 16th April, 1987 of the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No.594 of 1986 and for direction to the respondents to consider the petitioner as having been promoted to the post of Accountant w.e.f. 3rd August, 1970. Further prayer has been made for quashing and setting aside of the order of the respondent No.1 dated 17th June, 1986 cancelling the deemed date of promotion given to the petitioner.

2. This petition was admitted on 11th June, 1990. On 19th November, 1990, this Court ordered by way of interim relief that the future promotions to the post of Junior Superintendent will be subject to the decision of this petition.

3. Reply to the special civil application has been filed by the respondent No.1. However, the respondent No.2 has not cared to file reply to the special civil application.

4. The facts of the case are that the petitioner was appointed as a Junior Clerk on 16th March, 1962 in the office of the Director of Technical Education, Government of Gujarat after having been selected by the Gujarat Public Service Commission. He failed to pass the Post Training Examination during the prescribed period and chances and his services came to be terminated. It is not in dispute that this order of termination of the services has not been challenged by the petitioner by filing any departmental appeal or by filing petition in this court or the civil suit. The petitioner was given the appointment as a Junior Clerk in the office of Director of Technical Education, Government of Gujarat w.e.f. 4th November, 1963. While he was working as a Junior Clerk in the office of the Director of Technical Education, Government of Gujarat he passed the qualifying examination for promotion to the post of Senior Clerk. In 1968, Technical Education Board was constituted and the services of the petitioner were transferred to the said Board. A question arose for the regularisation of the services of the petitioner. Under the order dated 10th April, 1970, the General Administration Department, Government of Gujarat ordered for regularisation of the services of the petitioner w.e.f. 17th April, 1970. In pursuance of the order of the G.A.D., Government of Gujarat, the respondent No.1-Board passed an order on 20th November, 1985 regularising the services accordingly and he was given the deemed date of promotion on the post of Accountant w.e.f. 3rd August, 1970. He was awarded only the notional pay of the post of Accountant. The

post of Accountant is equivalent to the post of Senior Clerk. However, under the order dated 17th June, 1986, the respondent No.1 cancelled its earlier order dated 20th November, 1985. This has been done on the basis of the letter of the Education Department, Government of Gujarat dated 22nd May, 1986. It is the grievance of the petitioner that in the order dated 22nd May, 1986, the Education Department has not given any reason for cancellation of the benefits which have already been given to the petitioner. It is also the grievance of the petitioner that this order has been passed without giving any notice and an opportunity of hearing to the petitioner. It is the case of the petitioner that the State of Gujarat has power to regularise the services of its employees and reference in this respect has been made to the Rules 16 and 18 of the Gujarat (Civil Services Recruitment) General Rules. On 5th July, 1986, the petitioner made an application to the Board for reconsideration of its decision. On 26th August, 1986, this application came to be rejected by the respondent No.1 without giving any reasons except stating that the deemed date of the regularisation of the petitioner has been cancelled in view of the letter of the Education Department dated 22nd May, 1986. Against this order, the petitioner preferred an appeal, being Appeal No.594 of 1986 before the Gujarat Civil Services Tribunal, Gandhinagar, which came to be dismissed on 16th April, 1987. Hence, this special civil application.

5. It is the case of the petitioner that the order of the General Administration Department, Government of Gujarat dated 10th April, 1970 regularising the services of the petitioner w.e.f 17th April, 1970 has not been cancelled or withdrawn. This is not in dispute. Learned counsel for the petitioner contended that the G.A.D. is a competent authority to decide the question of regularising of the services of an employee, it is vested with the powers of regularisation of employees under Rules 16 and 17 of the Rules aforesaid. Once this decision has been taken by the G.A.D. which has been acted upon by the employer of the petitioner, unless that order is cancelled or recalled, the benefits conferred upon the petitioner could not have been taken back. In her submissions, the Education Department though passed the order, but that order also being contrary to the order of the G.A.D.. the Board could not have acted upon the same. In such matters, the Board has to take clarification from the G.A.D. and only in case where it withdraws its earlier order, there may be some semblance of justification with the Education Department and the respondent No.1 to pass the order of cancellation of

regularising the service of the petitioner. It has next been contended that once the order has been passed, regularising the services of the petitioner as well as giving deemed date of promotion, cancellation thereof, results in civil consequences and before making such an order, the principles of natural justice are to be adhered to. In this respect, Smt. Ketty A. Mehta, learned counsel for the petitioner contends that both the Board as well as the Education department have violated the principles of natural justice. Lastly, it is contended that otherwise also, the order of the Education Department is bad in law as it has not given out any reason whatsoever to give direction to the respondent No.1 to cancel its earlier order dated 20th November, 1985, which has been made on the direction of the G.A.D. Government of Gujarat.

6. Learned counsel for the respondent No.2 contended that though the petitioner has been appointed after selection by the G.P.S.C. but as he failed to pass the Post Training Examination in the prescribed time, his services were terminated. It is different matter that later in point of time, some concession or sympathy has been extended to him and he has been given the appointment but it being an appointment dehors of the recruitment rules, no benefit could have been given of regularisation of services to him. It has next been contended that the Education Department is controlling authority and once it has decided not to give this benefit of regularisation to the petitioner, the Board has no option except to cancel its earlier decision. The decision of G.A.D. is of no relevance whatsoever.

7. However, the learned counsel for the respondent does not dispute that :

- (i) the second appointment of the petitioner has not been challenged by anybody in the Department.
- (ii) the second appointment was not cancelled or revoked.
- (iii) nobody in the Board has also questioned the appointment of the petitioner.
- (iv) the power vests in the State Government to regularise the services of its employees under the Rules framed under Article 309 of the Constitution.
- (v) G.A.D. has passed the order on 10th April, 1970

regularizing the services of the petitioner w.e.f. 17th April, 1970. This order has not been revoked or recalled or cancelled by the G.A.D..

(vi) the order of the G.A.D. dated 10th April, 1970 has not been challenged by any of the employee of the Board.

(vii) the Board acted upon this order and passed the order giving benefit of regularisation of services of the petitioner as well as deemed date of promotion under the order dated 20th November, 1985.

(viii) this order of the Board has also not been challenged by any of the employee of the Board.

(ix) the Education Department made an order on 22nd May, 1986 but therein no reasons have been given whatsoever as well as it has been passed without giving any notice and opportunity of hearing to the petitioner.

8. The Education Department is a party to this petition. It has failed to show any reason good, bad or indifferent for passing of the order dated 22nd May, 1986. Reply to the special civil application has also not been filed by the Education Department, and as such, it has failed to justify its order dated 22nd May, 1986. The respondent No.2 has also failed to show that in the presence of the order of the G.A.D. regularising the services of the petitioner how this order could have been passed. The petitioner has passed the qualifying examination for promotion also. Power vests with the State Government to regularise the services of the employee and once the G.A.D. has considered this matter for regularising the services of the petitioner, this order could not have been ignored by the Education Department. If the Education Department considers that this order of the G.A.D. is not legal and valid, proper course would have been for it to approach to the G.A.D. for its revocation or cancellation. But so long as this order stands, it has to be given effect to and it has been given effect to by the Board, but only on the basis of the order dated 22nd May, 1986, the Board could not have reviewed its earlier order.

9. Learned counsel for the respondent No.1 being repeatedly asked by the court is unable to show what were the reasons with the Education Department to pass this

order dated 22nd May, 1986. She has also failed to show any order under which the G.A.D. has reviewed its earlier order dated 10th April, 1970.

10. As a result of the aforesaid discussion, this petition succeeds and the same is allowed and the order of the Tribunal dated 16th April, 1987 and that of the Board dated 17th June, 1986 are quashed and set aside. Rule is made absolute. However, in the facts of this case, no order as to costs.

zgs/-